

LEGISLATIVE GUIDE TO CIVIL COMMITMENT OF SEXUALLY VIOLENT PREDATORS



Legislative
Services
Agency

Note to Reader:

Research is conducted by the Legal Services Division of the Iowa Legislative Services Agency in an objective and nonpartisan manner. Although a Legislative Guide may identify issues for consideration by the General Assembly, nothing contained in a Guide should be interpreted as advocating a particular course of action. The reader is cautioned against using information contained in a Legislative Guide to draw conclusions as to the legality of a particular behavior or set of circumstances.

About the Author:

This Guide was written by Joseph McEniry, J.D., Creighton University, 1992. Mr. McEniry has been a Legal Counsel for the Legal Services Division of the Legislative Services Agency since 1998. He staffs the Judiciary and Transportation Committees and the Joint Appropriations Subcommittee on the Justice System, and drafts legislation in the areas of judiciary, corrections, and transportation.

Mr. McEniry can be reached by telephone at (515) 281-3189 or by e-mail at: joseph.mceniry@legis.state.ia.us

December 2000

TABLE OF CONTENTS

I. Introduction.....	1
II. Characteristics of Persons Committed to the Sexually Violent Predator Program.....	1
III. Eligibility.....	2
IV. Process.....	2
A. Commitment of a Sexually Violent Predator.....	2
1. Petition.....	2
2. Probable Cause Hearing.....	3
3. Trial and Commitment.....	4
B. Control, Care, and Treatment.....	4
C. Annual Review.....	6
D. Final Hearing.....	6
E. Petition for Discharge or Placement in a Transitional Release Program.....	6
F. Transitional Release.....	7
G. Release With or Without Supervision.....	8
V. Criminal Offenses Committed While in Custody.....	8
VI. Constitutional Issues.....	9
VII. Summary.....	11

Civil Commitment of Sexually Violent Predators



I. Introduction.

This Legislative Guide provides an overview of Iowa's law on the civil commitment of sexually violent predators for custodial control, care, and treatment (Sexually Violent Predator Act). In the landmark case *Kansas v. Hendricks*, the United States Supreme Court upheld a Kansas statute that permitted the civil commitment of certain sexually violent criminal offenders after the criminals' sentences had been completed.¹ The United States Supreme Court in 2002 affirmed *Kansas v. Hendricks*, and in so doing the Court stated in order for a sex offender to be civilly committed, the state must prove a serious difficulty in controlling behavior.² In 1998 the General Assembly passed the Sexually Violent Predator Act, which became effective on July 1, 1998. The Iowa Supreme Court has held that the Sexually Violent Predator Act does not violate the Equal Protection Clause and does not deny a person due process under both the United States and Iowa Constitutions.³ The Court has also concluded that the Act does not violate the Ex Post Facto or the Double Jeopardy Clauses of the United States and Iowa Constitutions.⁴

This Guide addresses who is eligible for this form of civil commitment, the process of civilly committing a sexually violent predator, what type of control, care, and treatment methods are used, how a person is released from commitment, and constitutional issues related to the Act.

The Sexually Violent Predator Act is found in Iowa Code chapter 229A. References to the Iowa Code or Code are to the 2003 Iowa Code. The references to the Iowa Administrative Code are current to August 2002.

II. Characteristics of Persons Committed to the Sexually Violent Predator Program.

As of June 2002, 31 persons have been committed for custodial control, care, and treatment as sexually violent predators and none have been released.⁵ Thirteen commitments are pending.⁶ The average annual cost to the Department of Human Services is approximately \$80,000 per person civilly committed.⁷ All of the persons who have been committed are male and their average age is 45.⁸ Each person committed, on average, has been convicted of sexual offenses against four victims, with the average age

¹ *Kansas v. Hendricks*, 521 U.S. 346 (1997).

² *Kansas v. Crane*, 534 U.S. 407 (2002).

³ *In re Detention of Morrow*, 616 N.W.2d 544, 549 (Iowa 2000); see generally U.S. Const. amend. XIV and Iowa Const. art. 1, § 6 (equal protection); and U.S. Const. amend. XIV and Iowa Const. (ex post facto) art. I, § 9 (due process).

⁴ *In re Detention of Garren*, 620 N.W.2d 275, 284 (Iowa 2000). See generally U.S. Const. art. 1, § 10 and Iowa Const. art. 1, § 21 (ex post facto); U.S. Const. amend. V and Iowa Const. art. I, § 12 (double jeopardy).

⁵ Interview with Lettie Prell, Justice Systems Analyst for the Division of Criminal Justice and Juvenile Planning (CJJP) of the Department of Human Rights (June 2002). See also Iowa's Sexually Violent Predator Program Progress Report (2002), issued by the Attorney General in cooperation with the Department of Human Services.

⁶ Interview with Lettie Prell, Justice Systems Analyst for the Division of Criminal Justice and Juvenile Planning (CJJP) of the Department of Human Rights (June 2002). See also Iowa's Sexually Violent Predator Program Progress Report (2002), issued by the Attorney General in cooperation with the Department of Human Services.

⁷ Legislative Services Agency, Fiscal Services Division. Annually the Department of Justice and the State Public Defender each receive approximately \$300,000 to civilly commit sexually violent predators or to defend them during the commitment process.

⁸ Iowa's Sexually Violent Predator Program Progress Report (2002), issued by the Attorney General in cooperation with the Department of Human Services.



Civil Commitment of Sexually Violent Predators

of each victim being 14.⁹ The most common offenses for which sexually violent predators are convicted are lascivious acts with a child and sexual abuse.¹⁰

III. Eligibility.

The Attorney General or a county attorney may file a petition to commit a convicted or charged offender who meets the definition of a sexually violent predator.¹¹ A sexually violent predator is defined as a person who has been convicted of or charged with a sexually violent offense and who suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts.¹² The General Assembly has found that a small but extremely dangerous group of persons generally have antisocial personality features that are unamenable to existing mental illness treatment modalities and that render them likely to engage in sexually violent behavior.¹³ The General Assembly further finds that a sexually violent predator's likelihood of engaging in repeat acts of predatory sexual violence is high and that the existing involuntary commitment procedure under Code chapter 229 is inadequate.¹⁴

IV. Process.

A. Commitment of a Sexually Violent Predator.

1. Petition.

a. Confined Persons. The filing of a petition to commit a confined person as a sexually violent predator is basically a three-step process.¹⁵ First, an agency with jurisdiction over a person who is confined and who also may meet the definition of a sexually violent predator must give written notice to the Attorney General and a special multidisciplinary team within 90 days of the person's anticipated discharge date.¹⁶ Second, the multidisciplinary team which has been established by the Director of the Department of Corrections shall assess whether the person meets the definition of a sexually violent predator.¹⁷ If the

⁹ Id.

¹⁰ Id.

¹¹ Iowa Code §§ 229A.4(1) and 229A.4(2).

¹² Iowa Code § 229A.2(11) defines "sexually violent predator." Iowa Code § 229A.2(10) defines "sexually violent offense" as any violation of ch. 709 (relating to sexual abuse offenses), and murder, kidnapping, burglary, child endangerment, sexual exploitation, and pandering if the violation involves sexual abuse, attempted sexual abuse, or intent to commit sexual abuse. "Sexually violent offense" is also defined to mean any attempt or conspiracy to commit any offense listed in Iowa Code § 229A.2(10), any offense under prior law in this state or other state which is the equivalent to an offense listed in Iowa Code § 229A.2(10), and any act which has been determined beyond a reasonable doubt to have been sexually motivated.

¹³ Iowa Code § 229A.1.

¹⁴ Iowa Code § 229A.1.

¹⁵ Iowa Code §§ 229A.3 and 229A.4.

¹⁶ An agency with jurisdiction is defined in Iowa Code § 229A.2(1) as an agency which has custody of or releases a person serving a sentence or term of confinement or is otherwise in confinement based upon a lawful order or authority, and includes but is not limited to the Department of Corrections, the Department of Human Services, a judicial district department of correctional services, and the Iowa Board of Parole.

¹⁷ Iowa Code § 229A.3(1). As of July 2002, the multidisciplinary team includes the Director of the Department of Corrections, a person from the Iowa Coalition Against Sexual Assault, a county sheriff, the Social Work Administrator and Assistant Director of Offender Services at the Iowa Medical Classification Center, a Department of Human Services supervisor or Department of Corrections clinical director, Department of Corrections classification manager, a clinical psychologist, and the director for the Sex Offender Treatment Program at the Mount Pleasant Correctional Facility. See also Iowa's Sexually Violent Predator Program Progress Report (2002), issued by the Attorney General in cooperation with the Department of Human Services, which states that the Department of Corrections reviewed 517 cases and referred 85 cases to the multidisciplinary team, which then referred 55 cases to the prosecutor's review committee.

Civil Commitment of Sexually Violent Predators



multidisciplinary team determines the person meets the definition of a sexually violent predator, the team forwards its recommendation to the Attorney General and the prosecutor's review committee.¹⁸ Finally, the prosecutor's review committee, which has been established by the Attorney General, then makes the determination as to whether the person meets the definition, and if so, the Attorney General may file a petition to commit the person as a sexually violent predator.¹⁹

b. Unconfined Persons. The county attorney of the county in which the person resides or the Attorney General, if requested by the county attorney, may file a petition to commit an unconfined person as a sexually violent predator if certain conditions are met.²⁰ The conditions include whether the person has been convicted or charged with a sexually violent offense and had the person's sentence discharged, or the person was charged with a sexually violent offense but was subsequently acquitted by reason of insanity, or the person was charged with a sexually violent offense but found to be incompetent to stand trial and was released from any type of supervision.²¹

2. Probable Cause Hearing.

Upon the filing of a petition, the court is required to make a preliminary determination as to whether probable cause exists to believe the person named in the petition is a sexually violent predator.²² If the court makes a preliminary determination that probable cause exists, the court shall place the person in custody, if the person is not already confined.²³ Within 72 hours of being taken into custody or transferred to an appropriate secure facility, the person is entitled to another probable cause hearing which shall be held to finally determine whether probable cause exists to believe the detained person is a sexually violent predator.²⁴ The person may waive the hearing and any party may seek a continuance upon a showing of good cause.²⁵ The person has basically the same rights as a criminal defendant, including the right to be represented by counsel and to present evidence and cross-examine the state's witnesses.²⁶ However, the rules of evidence do not apply and the state may rely solely upon the petition to prove probable cause.²⁷ If at the conclusion of the probable cause hearing the court determines that probable cause does exist, the court shall direct the

¹⁸ Iowa Code § 229A.3(4).

¹⁹ Iowa Code §§ 229A.3(5) and 229A.4(1). The prosecuting review team consists of one member from the Director of the Division of Criminal Investigation in the Department of Public Safety, a deputy attorney general, Special Assistant Attorney General, the President of the Iowa County Attorneys Association, a private attorney, and the county attorney of the county in which the respondent was last convicted. See also Iowa's Sexually Violent Predator Program Progress Report (2002), issued by the Attorney General in cooperation with the Department of Human Services, which states that of the 55 cases referred to it by the multidisciplinary team, the Committee recommended that 17 cases be prosecuted and 16 commitment petitions were filed from July 1, 2001, to June 30, 2002.

²⁰ Iowa Code § 229A.4(2).

²¹ Iowa Code § 229A.4(2).

²² Iowa Code § 229A.5(1).

²³ Iowa Code § 229A.5(1).

²⁴ Iowa Code § 229A.5(2).

²⁵ Iowa Code § 229A.5(2).

²⁶ Iowa Code § 229A.5(2).

²⁷ Iowa Code § 229A.5(3).



Civil Commitment of Sexually Violent Predators

person to be held at an appropriate secure facility for an evaluation as to whether the person is a sexually violent predator.²⁸

3. Trial and Commitment.

Within 90 days of the probable cause hearing or its waiver, a trial must be held to determine whether the person is a sexually violent predator.²⁹ The person or the person's attorney may waive the 90-day trial requirement.³⁰ The person may retain experts to perform an examination prior to trial.³¹ If the court determines the examination is necessary and the person is indigent, the state is responsible for compensating the expert.³² The state may also examine witnesses under oath prior to the trial.³³ A person is entitled to a jury trial to determine if the person is a sexually violent predator.³⁴ However, the judge or the Attorney General may demand a jury trial if the person chooses not to make such a demand.³⁵ The jury shall consist of eight members, the same number as are seated in other civil trials.³⁶ At trial the state carries the burden of proof, which must be beyond a reasonable doubt, for the determination that the person is a sexually violent predator and the Iowa Rules of Civil Procedure and Evidence are applicable.³⁷ The determination must be unanimous if tried before a jury.³⁸ If the court or jury determines that the person is a sexually violent predator, the person is then committed to the custody of the Director of Human Services for control, care, and treatment.³⁹ If the court or jury does not determine beyond a reasonable doubt that the person is a sexually violent predator, then the court shall order the person to be released.⁴⁰

B. Control, Care, and Treatment.

Once committed, the person is subject to the Department of Human Services' control, care, and treatment until it is determined that the person is safe to be placed in a transitional release program or discharged.⁴¹ The control, care, and treatment of a sexually violent predator is at a facility operated by the department.⁴² A person committed as a sexually violent predator is confined in a secure facility and is segregated at all times from any other patients under supervision of the department.⁴³ The clinical staff evaluates each

²⁸ Iowa Code § 229A.5(5). Iowa Code § 229A.2(2) defines "appropriate secure facility" to mean a state facility that is designed to confine but not necessarily treat sexually violent predators.

²⁹ Iowa Code § 229A.7(2).

³⁰ Iowa Code § 229A.7(2).

³¹ Iowa Code § 229A.6(2).

³² Iowa Code § 229A.6(2).

³³ Iowa Code § 229A.5A(2).

³⁴ Iowa Code § 229A.7(3).

³⁵ Iowa Code § 229A.7(3).

³⁶ *In re Detention of Williams*, 628 N.W.2d 447, 454 (Iowa 2001).

³⁷ Iowa Code §§ 229A.7(3) and 229A.7(4).

³⁸ Iowa Code § 229A.7(4).

³⁹ Iowa Code § 229A.7(4).

⁴⁰ Iowa Code § 229A.7(6).

⁴¹ Iowa Code § 229A.7(4).

⁴² Iowa Code § 229A.7(5).

⁴³ Iowa Code § 229A.7(5).

Civil Commitment of Sexually Violent Predators



person using a scale from 1 to 10 on the program's 12 universal treatment goals.⁴⁴ The following are the universal treatment goals of the program for the person:⁴⁵

- Thoroughly disclose sexual behavior.
- Develop insight into risk factors.
- Resolve victimization issues.
- Develop victim empathy.
- Develop solitary and interactive social skills.
- Develop strong cognitive coping skills.
- Modify deviant arousal.
- Complete relapse prevention plan.
- Demonstrate relationship and intimacy skills.
- Modify negative self-concept.
- Develop problem-solving skills.
- Demonstrate motivation to change.

Sexually violent predator control, care, and treatment are currently provided at the Civil Commitment of Sexual Offenders Unit at Oakdale.⁴⁶ The treatment program consists of cognitive-behavior therapy and relapse prevention.⁴⁷ The cognitive therapy identifies specific cognitive distortions of the person that are related to the person's offense cycle and to other behaviors that are related to the offense cycle.⁴⁸ The person is then taught behavioral techniques for reducing deviant arousal and for increasing appropriate arousal, and the changes are monitored through physiological testing.⁴⁹ The relapse prevention portion of the program teaches the person to recognize their offense cycle and to intervene early in the cycle before their deviant impulses become overwhelming.⁵⁰

⁴⁴ Iowa's Sexually Violent Predator Program Progress Report, dated June 2001, issued by the Attorney General in cooperation with the Department of Human Services.

⁴⁵ Id.

⁴⁶ Iowa Admin. Code 441-1.3(2). Under 2002 Iowa Acts, Second Extraordinary Session, ch. 1003, § 131, the unit will be relocated to the State Mental Health Institute at Cherokee.

⁴⁷ See program description of the Civil Commitment Unit for Sexual Offenders of the State of Iowa by James Gardner, Ph.D. (December 1999). Also see Iowa's Sexually Violent Predator Program Progress Report, dated June 2002, issued by the Attorney General in cooperation with the Department of Human Services. The treatment program staff developed a therapeutic interaction model using the acronym MEDICAL when interacting with the patients. The components of the model are: **M**odeling appropriate behavior, **E**mpathizing with patients, **D**eescalating agitated patients, **I**nstructing patients in alternative behaviors, **C**onfronting patients with firmness and compassion, **A**ccepting and affirming patients as worthwhile individuals, and **L**istening actively to understand patients.

⁴⁸ See program description of the Civil Commitment Unit for Sexual Offenders of the State of Iowa by James Gardner, Ph.D. (December 1999).

⁴⁹ Id. See also Iowa's Sexually Violent Predator Program Progress Report, dated June 2002, issued by the Attorney General in cooperation with the Department of Human Services. The program currently uses three physiological measures to assess treatment progress. The measures include polygraph examinations to assess a person's honesty, penile plethysmographic examinations to determine a person's sexual arousal patterns, and an Abel assessment to provide physiological measure of a patient's sexual interests as measured by visual reaction time technology.

⁵⁰ See program description of the Civil Commitment Unit for Sexual Offenders of the State of Iowa by James Gardner, Ph.D. (December 1999).



Civil Commitment of Sexually Violent Predators

C. Annual Review.

A rebuttable presumption exists that the commitment of a sexually violent predator should continue.⁵¹ However, a person committed as a sexually violent predator is entitled to an annual review of the person's mental abnormality.⁵² The person may retain an expert to perform the examination or, if the person is indigent, the court may appoint an expert.⁵³ The expert's report shall be provided to the court that committed the person and the court then shall conduct an annual review, and if warranted, set a final hearing on the status of the committed person.⁵⁴ The committed person also has the right to petition the court for discharge or placement in a transitional release program during the annual review process.⁵⁵ If at the time of the annual review the committed person has filed a petition for discharge or placement in a transitional release program with authorization from the Director of Human Services, the court shall set a final hearing and an annual review is not held.⁵⁶ If the committed person petitions the court for discharge without authorization from the Director of Human Services, the court must first conduct an annual review.⁵⁷ If the person shows by a preponderance of the evidence that a final hearing should be held, the court shall set a final hearing within 60 days of the determination to hold the final hearing.⁵⁸

D. Final Hearing.

The person is entitled to an attorney at the final hearing and has all the constitutional protections that were given the person at the original commitment proceeding, including a jury trial.⁵⁹ The Attorney General represents the state at the final hearing.⁶⁰ The burden of proof at the hearing is on the state to prove beyond a reasonable doubt that the person's mental abnormality remains such that the person is not likely to engage in predatory acts that constitute sexually violent offenses if discharged, or is not suitable for placement in a transitional release program.⁶¹

E. Petition for Discharge or Placement in a Transitional Release Program.

A person may petition the court for discharge or placement in a transitional release program at the annual review.⁶² However, if a person has previously filed a petition for

⁵¹ Iowa Code § 229A.8(1). The presumption may be rebutted when facts exist to warrant a hearing to determine whether a committed person no longer suffers from a mental abnormality which makes the person likely to engage in predatory acts constituting sexually violent offenses.

⁵² Iowa Code § 229A.8(2). The Iowa Rules of Evidence do not apply to the annual review. See Iowa Code § 229A.8(5).

⁵³ Iowa Code § 229A.8(2).

⁵⁴ Iowa Code § 229A.8(3). The annual review may be based solely on written records.

⁵⁵ Iowa Code § 229A.8(4).

⁵⁶ Iowa Code § 229A.8(5)(f) and see generally Iowa Code § 229A.10(1).

⁵⁷ Iowa Code § 229A.8(5)(g) and generally see Iowa Code § 229A.10(1).

⁵⁸ Iowa Code § 229A.8(5)(e). The person must prove either the mental abnormality of the person has so changed that the person is not likely to engage in predatory acts constituting sexually violent offenses if discharged or the person is suitable for placement in a transitional release program.

⁵⁹ Iowa Code § 229A.8(6)(a).

⁶⁰ Iowa Code § 229A.8(6)(c).

⁶¹ Iowa Code § 229A.8(6)(d). During the final hearing, if the Director of Human Services has authorized the committed person to petition for discharge or for placement in a transitional release program and the case is before a jury, testimony by a victim of a prior sexually violent offense committed by the person is not admissible. If the director has not authorized the petition or the case is before the court, testimony by a victim may be admitted. See Iowa Code § 229A.8(6)(e).

⁶² Iowa Code § 229A.8(4). "Discharge" means an unconditional discharge from the sexually violent predator program. See Iowa Code § 229A.2(3). "Transitional release" means a conditional release from a secure facility operated by the Department of Human Services with the conditions of such release set by the court or the department. See Iowa Code § 229A.2(12).

Civil Commitment of Sexually Violent Predators



discharge or placement in a transitional release program, the court must summarily dismiss the petition unless new facts are presented which make a hearing warranted.⁶³ In addition to a person petitioning the court for discharge or placement in a transitional release program, the Director of Human Services may authorize such a petition.⁶⁴ If a petition is filed with authorization from the director, the final hearing is set within 90 days of the authorization. If a petition is filed without authorization, the court shall first conduct the annual review.⁶⁵

F. Transitional Release.

Transitional release means a conditional release from a secure facility operated by the Department of Human Services with the conditions of such release set by the court or the department.⁶⁶ Placement in a transitional release program is appropriate if all of the following apply:⁶⁷

- The person's mental abnormality is no longer such that the person is at high risk to reoffend.
- The person has achieved and demonstrated significant insights into the person's sex offending cycle.
- The person has accepted responsibility for past behavior and understands the impact sexually violent crimes have upon a victim.
- A detailed lapse prevention plan has been developed and accepted by the treatment provider which is appropriate for the person's mental abnormality and sex offending history.
- No major discipline reports have been issued for the committed person for a period of six months.
- The person is not likely to escape or attempt to escape.
- The person is not likely to commit acts constituting sexually violent offenses.
- The placement is in the best interest of the person.
- The person has demonstrated a willingness to agree to abide by the rules of the program.

A person placed in a transitional release program must also register as a sex offender as provided in Code chapter 692A.⁶⁸ A person placed in a transitional release program may be returned to a secure facility by the treatment staff in the program.⁶⁹ If a person is returned to a secure facility, the Director of Human Services or the director's designee is required to notify the district court that an alleged violation of the program's rules has occurred and a hearing is held to determine if a violation has occurred.⁷⁰ At the hearing the

⁶³ Iowa Code § 229A.11.

⁶⁴ Iowa Code § 229A.8(5)(e) and see generally Iowa Code § 229A.10(1).

⁶⁵ Iowa Code § 229A.8(5)(g).

⁶⁶ Iowa Code § 229A.2(12).

⁶⁷ Iowa Code § 229A.8A(2).

⁶⁸ Iowa Code § 229A.8A(4).

⁶⁹ Iowa Code § 229A.8B(1).

⁷⁰ Iowa Code § 229A.8B(3).



Civil Commitment of Sexually Violent Predators

burden is on the state to show by a preponderance of the evidence that a violation occurred.⁷¹ If the court determines a violation has occurred, the court may place the person back into the transitional release program with further restrictions or order the person returned to a secure facility.⁷²

G. Release With or Without Supervision.

The law provides an option for release with or without supervision while maintaining court jurisdiction over the person. Release of a person from a secure facility or a transitional release program is appropriate if any of the following apply.⁷³

- The Attorney General stipulates to the release.
- The court or a jury has determined that the person should be discharged from the program, but the court has determined it is in the best interests of the community to order release with or without supervision before the person is discharged.

A person may not petition the court for release with or without supervision.⁷⁴ If release with or without supervision is ordered, the Department of Human Services prepares a release plan addressing the committed person's needs for counseling, medication, community support services, residential services, vocational services, alcohol or other drug treatment, sex offender treatment, or any other treatment which may be necessary.⁷⁵ If the person is released with supervision, an agency with jurisdiction that is familiar with the placement of criminals in the community supervises the committed person.⁷⁶ If the committed person violates the release plan, the agency supervising the person is responsible for initiating any court proceedings against the person.⁷⁷ The burden is on the state to show by a preponderance of the evidence that a violation of the release plan has occurred.⁷⁸ If the court finds the committed person violated the release plan, the court may order the person to be confined in a secure facility, place the person in the transitional release program, or rerelease the person with or without supervision.⁷⁹

V. Criminal Offenses Committed While in Custody.

A person who is in safekeeper status or who has been committed as a sexually violent predator shall remain in custody unless released by court order or discharged.⁸⁰ If a safekeeper or a person who has been committed as a sexually violent predator escapes from custody, the person commits a simple misdemeanor or may be subject to contempt.⁸¹

⁷¹ Iowa Code § 229A.8B(4).

⁷² Iowa Code § 229A.8B(5).

⁷³ Iowa Code § 229A.9A(1).

⁷⁴ Iowa Code § 229A.9A(5).

⁷⁵ Iowa Code § 229A.9A(2).

⁷⁶ Iowa Code § 229A.9A(4).

⁷⁷ Iowa Code § 229A.9A(4).

⁷⁸ Iowa Code § 229A.9B(4).

⁷⁹ Iowa Code § 229A.9B(5).

⁸⁰ Iowa Code § 229A.2(8). "Safekeeper" means a person who is confined in an appropriate secure facility but who is not subject to an order of commitment. See Iowa Code § 229A.2(8).

⁸¹ Iowa Code § 229A.5B(2) defines "escape" to include any person in custody who leaves or attempts to leave a facility without authorization, any knowing or voluntary absence from a place where the person is required to be present, or any escape or attempt to escape custody while being transported by facility personnel.

Civil Commitment of Sexually Violent Predators



If the person commits any criminal offense, the civil commitment proceeding or the treatment process is suspended until the criminal proceedings are completed.⁸² Upon the filing of a criminal complaint, indictment, or information, the person is transferred to the county jail in the county where the criminal offense occurred and, if the person is sentenced to prison, the person serves the sentence at a correctional institution.⁸³ If a person who has been placed in a transitional release program, released with or without supervision, or discharged pursuant to Code chapter 229A subsequently is convicted of a sexually predatory or sexually violent offense, the person shall be sentenced to life in prison on the same terms as a class "A" felon.⁸⁴

VI. Constitutional Issues.

The constitutionality of Iowa's Sexually Violent Predator Act has been upheld by the Iowa Supreme Court.⁸⁵ The United States Supreme Court has also recently affirmed the landmark *Kansas v. Hendricks* case.⁸⁶ The essential factor that seems to be the basis for upholding the constitutionality of sexually violent predator commitment statutes is the fact that the commitment process is deemed to be civil in nature; thus many of the constitutional safeguards that apply in criminal cases do not apply to a person committed as a sexually violent predator.⁸⁷ The Iowa Supreme Court has concluded that Iowa's Sexually Violent Predator Act is civil and not criminal.⁸⁸ In determining whether a statute is criminal or civil, the Court stated it first must decide whether the:

...[legislature] in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other. Second, where [the legislature] has indicated an intention to establish a civil penalty, [the Court] inquire[s] further whether the statutory scheme [is] so punitive either in purpose or effect as to negate that intention.⁸⁹

In order to ascertain the punitive nature of a statute, the Court then must consider the following factors:

[w]hether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment-retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it and whether it appears excessive in relation to the alternative purpose assigned....⁹⁰

The Court will not override legislative intent to interpret a statute as criminal unless there is clear proof it is not civil in nature.⁹¹

⁸² Iowa Code § 229A.5C(1).

⁸³ Iowa Code § 229A.5C(2).

⁸⁴ Iowa Code § 901A.2(6). If the person commits a misdemeanor offense under ch. 709, the person shall be sentenced to life in prison with the possibility of parole. See Iowa Code § 901A.2(6).

⁸⁵ Williams at 447; *In re Detention of Ewoldt*, 634 N.W.2d 622 (Iowa 2001).

⁸⁶ *Seling Superintendent Special Commitment Center v. Young*, 531 U.S. 250, 260 (2001).

⁸⁷ *Id.* at 260; Garren at 283.

⁸⁸ Garren at 283.

⁸⁹ *Id.* at 278, quoting *United States v. Ward*, 448 U.S. 242, 248.

⁹⁰ *Id.* at 278, quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169.

⁹¹ *Hudson v. United States*, 522 U.S. 93, 100; Garren at 278.



Civil Commitment of Sexually Violent Predators

Double Jeopardy. The courts have ruled that sexually violent predator commitment statutes do not violate the Double Jeopardy Clause of the United States and Iowa Constitutions.⁹² The Double Jeopardy Clause does not prohibit the imposition of all additional sanctions that can be described as punishment.⁹³ Rather, the prohibition of double jeopardy applies only to criminal cases, and since it has been determined that the Iowa Act is civil in nature, the commitment of a sexually violent predator is not a second prosecution for the same crime.⁹⁴

Ex Post Facto. The Iowa sexually violent predator commitment statutes do not violate the Ex Post Facto Clause of the United States and Iowa Constitutions because the statutes are considered civil in nature; thus the statutes do not retroactively punish a person for conduct prior to the effective date of the statutes.⁹⁵

Equal Protection. The Iowa Supreme Court has rejected the claim that the Iowa Act violates the Equal Protection Clause of the United States and Iowa Constitutions.⁹⁶ The United States and Iowa Constitutions both require that similarly situated persons be treated alike under the law.⁹⁷ The Court found that the distinction drawn between a person civilly committed for having a serious mental impairment under Iowa Code chapter 229 as opposed to Iowa Code chapter 229A is rationally related to the state's interest in protecting the public while effectively treating sexually violent predators who have been unamenable to existing mental illness treatment.⁹⁸ According to the Court, classification does not deny equal protection simply because in practice it results in some inequality; practical problems of government permit rough accommodations.⁹⁹

Due Process. The courts have so far also rejected claims that sexually violent predator commitment statutes violate the Due Process Clause of the United States and Iowa Constitutions.¹⁰⁰ In both constitutions, this clause provides that no person shall be denied life, liberty, or property without due process of law.¹⁰¹ The United States Supreme Court in *Hendricks* held that even though freedom from restraint has always been at the core of the liberty protected by the Due Process Clause, an individual's constitutionally protected interest in avoiding physical restraint may be overridden even in the civil context.¹⁰² In determining what process is due when faced with the loss of a right, the Iowa Supreme Court has set out the following factors that must be considered: (1) the private interest affected, (2) the state's interest, and (3) the risk of erroneous deprivation of the

⁹² Seling at 259; Garren at 284.

⁹³ Hudson at 103.

⁹⁴ Garren at 283-284.

⁹⁵ Seling at 260; Garren at 283.

⁹⁶ Garren at 286.

⁹⁷ Williams at 452.

⁹⁸ Id. at 454. Iowa Code chapter 229 is the civil commitment chapter for persons with a mental illness, while Iowa Code chapter 229A is the civil commitment chapter for sexually violent predators.

⁹⁹ Morrow at 548.

¹⁰⁰ Hendricks at 353; Garren at 286.

¹⁰¹ Garren at 284-285.

¹⁰² Hendricks at 346.

Civil Commitment of Sexually Violent Predators



individual's interest under the process, and the value of additional or different safeguards in that process.¹⁰³

Summary of Constitutional Issues. It appears from the court decisions that if a person is to successfully challenge Iowa's Sexually Violent Predator Act, the person must challenge the Act based upon violation of the right to due process, although the United States Supreme Court has yet to directly rule whether a statute similar to Iowa's Act violates the Equal Protection Clause of the United States Constitution.¹⁰⁴ The United States Supreme Court in *Seling*, however, makes note that persons committed under a sexually violent predator commitment statute may have legitimate claims in state court regarding the conditions and treatment methods administered by a sexually violent program.¹⁰⁵ The Court further stated that it is a question of state law whether the sexually violent predator program is operating in accordance with state law and whether any appropriate remedy should be provided.¹⁰⁶

Under the court opinions, it appears that if the state does not continue to adequately treat the person as mandated by the sexually violent predator commitment statute and it just warehouses the individuals, the statute could be interpreted as punitive in nature and be deemed unconstitutional.

VII. Summary.

This Legislative Guide provides an overview of Iowa's Sexually Violent Predator Act found in Iowa Code chapter 229A. The overview addresses who is eligible for civil commitment as a sexually violent predator, the process of civilly committing the person, what type of control, care, and treatment methods are used, how a person is released from commitment, and the constitutional issues that relate to the implementation of the Act.

A person may be committed as a sexually violent predator if a person has been previously convicted or charged with a sexually violent offense and suffers from a mental abnormality which makes it likely that the person will engage in future sexually predatory acts. As of July 2002 the state has civilly committed 31 such persons and none has been released.

A person is entitled to have a jury make the determination that the person is a sexually violent predator. If a determination is made that the person is a sexually violent predator, the person is committed for control, care, and treatment to the Department of Human Services. After commitment a sexually violent predator is entitled to an annual examination of the person's mental abnormality.

Discharge from the sexually violent predator program is initiated in two ways — the Director of Human Services may authorize a sexually violent predator to petition for discharge, or a sexually violent predator can petition the court directly for discharge. If a person is discharged, the person is unconditionally discharged from the program.

¹⁰³ Williams at 458.

¹⁰⁴ See discussion of other constitutional challenges in *Seling* at 253.

¹⁰⁵ *Seling* at 258.

¹⁰⁶ *Id.*



Civil Commitment of Sexually Violent Predators

However, a person can be placed in a transitional release program or released with or without supervision without being discharged from the sexually violent predator program.

0440RR